No. 1585

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit.

WONG SEE YING,
Appellant,

vs.

THE UNITED STATES OF AMERICA,
Appellee.

BRIEF ON BEHALF OF APPELLEE.

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STATEMENT OF FACTS.

Wong See Ying, a Chinese person, the appellant, came to this country as a passenger on October 12th, 1907, aboard the steamship Manchuria. He came directly from the Empire of China.

On October 16th, 1907, on the arrival of the vessel, a United States Immigration Inspector, P. F. Montgomery, acting under H. H. North, United States Commissioner of Immigration, a respondent in the proceedings to obtain the discharge of Wong See Ying on habeas corpus, went aboard the steamship Manchuria and interviewed the appellant Wong See Ying (see Records of Hearings, Tr. pages 54 and 55). He asked the applicant who the witnesses were

that might give testimony relative to his right to land in the United States. The applicant named Wong Hong and Wong Woo. (Tr. page 55.)

On October 23rd, 1907, these witnesses were examined. (Tr. pages 55, 59 and 60.) On October 24th, 1907 (Tr. 63), the taking of the testimony was resumed. Two affidavits were executed on October 23rd, 1907, and were received in evidence (Tr. pages 68 and 69). On November 12th, 1907, the applicant himself was examined. (Tr. page 70.)

This testimony to which we have been referring the Court is contained in the record of the proceedings which occurred in the office of the Commissioner of Immigration at San Francisco in the matter of the application of the appellant here for permission to land in the United States. This record was first offered by the appellant on the hearing upon the return to the writ (Tr. page 32). It was then offered by the appellee. (Tr. 50.) The offer of the record was again distinctly made by counsel. (Tr. pages 33 and 34.) No intimation was made that it was in any way incorrect.

At the very outset of his testimony in the District Court H. H. North testified on being called for petitioner that although this case had been designated a "raw native" case, every case stood on its own merits. (Tr. middle page 29 and bottom of page 29.) On page 30, Tr. middle of the page, he testified that there were three Chinese examined before the case was denied by him; that he had landed thou-

sands of cases in which the witnesses were merely Chinese; that his opinion in this case and his conclusions were to be found in the record of the hearing of the application to land. That record was received in evidence and a part of it we have already referred to. Near the middle of page 35, the witness stated that he "certainly did give the testimony " offered a fair and sound consideration".

On cross-examination beginning near the bottom of page 35, Tr., he testified that the testimony on the hearing of the application was taken before Mr. Montgomery, the inspector; that it was reduced to writing, and reviewed by him, the commissioner. He stated (Tr. p. 36) that he had read all the evidence; that he had also reviewed the opinion arrived at by Mr. Montgomery, the inspector, and considered his recommendations.

He further testified (Tr. bottom of page 36 and page 37) that he had given to the attorney for the applicant, Mr. O. P. Stidger, notice of the decision denying the applicant permission to land, and that opportunity had been afforded the applicant to furnish any additional testimony that he might desire to furnish before the record in the case was forwarded to Washington; that the applicant had not availed himself of this privilege; that the entire record had been forwarded to the Commissioner General of Immigration (Tr. bottom of page 37), and that the Commissioner General of Immigration and the Secretary of the Interior had affirmed his

opinion by dismissing the appeal taken by the applicant.

There were called in behalf of the respondents in the hearing in the District Court, Inspector P. F. Montgomery, the inspector who conducted the examination of the applicant, and his witnesses, and H. H. North, one of the respondents.

The United States had been made a party by stipulation. (Tr. p. 25.)

Mr. Montgomery testified (Tr. page 41 and page 42) that he had first taken a preliminary statement of the applicant aboard the vessel; that thereafter in the offices of the United States Commissioner of Immigration in the Appraisers Building at San Francisco (Tr. page 43) a hearing had been had for the purpose of taking the testimony of the witnesses for the applicant; that the witnesses had been sworn; that they had been examined through an official interpreter (Tr. page 43); that the testimony had been reduced to writing (Tr. page 44); that he himself had rendered an opinion to his superior officer, H. H. North. (Tr. 44.) That he had examined all of the witnesses offered in behalf of the applicant. (Tr. page 44.)

On cross examination (Tr. page 45) he testified that the witnesses were examined separately, as well as the applicant himself, and that the applicant was not notified; that he had a right to be present while his witnesses were being examined.

It was expressly admitted (Tr. page 45) on the redirect examination of this witness that the applicant had an attorney; he had appeared by an attorney, Mr. O. P. Stidger. This attorney helped to make the arrangements for the production of the witnesses (Tr. page 47), and had had notice of the hearing. The witness explained further on his redirect examination (Tr. page 48) that he had communicated in writing with the attorney with reference to the witnesses, and that the attorney had explained that all witnesses had been examined. (Tr. pages 48 and 49.)

H. H. North on being called for the respondents testified that under instructions from the Department of Commerce and Labor, it was his practice, upon request, to allow an applicant and his counsel to be present when the witnesses were being examined. (Tr. pages 50, 51 and 52.) Because the applicant and his attorney did not avail themselves of this privilege when they had the right so to do, cannot affect this case. On page 48, Tr., near the middle of the page, it was expressly admitted by the attorney for the petitioner that an attorney had appeared for the applicant in so far as he could appear under the supplemental rule of May 31st, 1907. This supplemental rule is found on page 4 of the Traverse. (Tr. pages 104-107.)

This letter is particularly referred to and fully explained by the witness, H. H. North, in his testimony. (Tr. page 49.)

ARGUMENT.

The applicant in this case was afforded every opportunity to present his testimony. The examination was conducted as required by the rules and regulations. These rules and regulations are set forth in paragraph 9 of the return. (Tr. pages 22-24 inclusive.) In addition the applicant would have been accorded such privileges as were allowed under the letter of May 31st, 1907, modifying regulations 5 and 6 had such privileges been requested by the applicant or his counsel. Such privileges were not denied the applicant.

The Chinese Inspector who took the testimony denied the application. (Tr. pages 77 and 85.) The Chinese Inspector in charge denied the application. (Tr. page 87.) The Commissioner of Immigration denied the application. (Tr. pages 91 and 92.) He stated "The evidence is wholly unconvincing, and I " believe that I am neither arbitrary nor unfair in " rejecting it entirely. Personally, I feel that the " evidence does not prove in any respect that the " applicant was ever here before, much less that he " is a native."

The opinion was affirmed by the action of the Commissioner General of Immigration, after a careful review of the testimony. (Tr. pages 93, 94 and 95.) The Secretary of the Interior concurred in the denial. (Tr. page 93.)

No other criticism of the testimony which was offered in support of the right of the applicant to land

need be made in behalf of the appellee here, than that which is found in the opinion of the Commissioner General of Immigration. He carefully analyzed the testimony and his opinion is logical and convincing. We submit that the only question presented by this case is whether an applicant may retry his case on a writ of habeas corpus. He had a fair hearing. Every witness that either he or his counsel could suggest was examined and after the testimony was taken and reduced to writing, opportunity was offered to supplement the record by additional proof in behalf of the applicant, prior to the forwarding of the record to Washington, upon the appeal.

The Supreme Court in the recent case of Chin Yow v. United States, 208 U. S. 8, expressly declared that where an applicant had a fair hearing, the Judicial Department would not review the evidence for the purpose of determining whether the judgment of the Immigration Department was correct.

It is not necessary that the hearing in these matters should be a judicial hearing within the stricter meaning of that term.

> United States v. Ju Toy, 198 U. S. 263; 49 L. Ed. 1044.

The exclusion or admission of aliens belongs to the political department of the government.

Necessarily the proceedings of that department in passing on the right of alien immigrants to land in the United States, or upon the right of a Chinese

person to land in the United States, are somewhat summary.

Yamataya v. Fisher, 189 U. S. 100; 47 L. Ed. 725.

Rule 7 of the Immigration Department implies that the applicant may supply additional evidence on the taking of his appeal.

United States v. Sing Tuck, 194 U. S. 161; 48 L. Ed. 920.

A writ of habeas corpus cannot be used as a writ of error.

Orteiza y Cortes v. Jacobs, 136 U. S. 330; 34 L. Ed. 464;

Ex parte Lennon, 166 U. S. 548; 41 L. Ed. 1110.

It is respectfully submitted that the only point before the District Court for determination was whether the applicant had had a fair hearing. On the evidence in this case the opinion of the District Court was clearly correct. In the Chin Yow case the allegations of the petition for an order to show cause why a writ of habeas corpus should not issue expressly stated that the applicant Chin Yow had offered testimony on the hearing of his application to land, which testimony the Commissioner of Immigration arbitrarily refused to receive, and which testimony, had the same been received, would have established the right of Chin Yow to land in the United States. There is not a single element of un-

fairness in the proceedings which were had in the Immigration Department in the case of this Chinese. The case is in no sense parallel to the Chin Yow case.

Respectfully submitted,

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